

STATEMENT OF FACTS

(Note: Record pages 88 through 128 were filed subsequent to the *Final Decree* and prior to the Rule 59 hearing; plaintiff/appellant's pleadings and motions cited below were each verified by accompanying affidavit.)

Petitioner/Plaintiff/Appellant ("Green") became president of Southside Neighborhood Organization ("SNO") in October 2009. In November 2010, Green was by a commanding margin elected president of SNO for a definite term of two years ending in January 2013. (*Complaint* R2, ¶4; *Motion for Temporary Injunction* {"M4TI"} R64, ¶8; *Affidavit of Bobby MacBryan Green* {"AffBMG"} R106, ¶2). Subsequent to entry of the *Final Decree*, the SNO office of president has been controlled by defendant/ appellee Jodi Jones ("Jones") (*Final Decree* R85, ¶4), the office of secretary being held by the mother of Jones, defendant/appellee Betty Ann Polaha ("Polaha") and the office of treasurer being held by the nearest neighbor of Jones, defendant/ appellee Mary Lee Jondahl ("Jondahl"). (*Answer* R40, ¶6-7; *Answer* R77, ¶6-7; *Complaint* R3, ¶6-7 ; *Supplemental Affidavit of Bobby MacBryan Green* {"SuppAffBMG"} R121, ¶8). Located in Johnson City, Southside Neighborhood is home to approximately 3000 citizens; about ninety households are members of SNO. (M4TI R66, ¶13; *Motion for Supplemental Pleadings* {"M4SuppPI"} R70, ¶13; SuppAffBMG R119, ¶3). SNO is an unincorporated association operating under duly adopted *Bylaws* which designate Robert's Rules of Order, Revised as the governing Authority; Robert's Rules of Order, Newly Revised (10th ed.) ("RONR") has been used by the Organization since 2009 because it automatically supplants all previous editions. (*Complaint* R2, ¶2; *Answer* R76, ¶2; *Answer* R39, ¶2; RONR p. ii). SNO must function according to RONR except when the SNO *Bylaws* demand otherwise. (M4TI R65, ¶11; M4SuppPI R70, ¶11; *Affidavit of Bobby MacBryan Green* {"AffBMG"} R106, ¶3;

RONR p. 16, lines 8-14; *Bylaws* R11, ¶Authority).

As a prerequisite to SNO membership, the SNO Bylaws specifically require **signing of a pledge to support the Bylaws**. (*Bylaws* R8, ¶Membership; *Answer* R39, ¶2; *Answer* R76, ¶2). All parties to this civil action are SNO members. (*Answer* R39, ¶2; *Answer* R76, ¶2; *Complaint* R2, ¶2). Green has faithfully and diligently fulfilled the duties required of the SNO president as set forth in the *Bylaws* and RONR, (*Complaint* R2, ¶4; AffBMG R111, ¶21) which he has diligently studied. (M4TI R64, ¶6; AffBMG R106, ¶3) and applied (AffBMG R106, ¶3). Green is strong and healthy and has at no time been negligent or incapacitated. (*Complaint* R4-5, ¶13; M4TI R67, ¶15; AffBMG R111, ¶21). Green received a letter dated 7 July 2011, signed by Jones, Polaha, Jondahl and others, praising him for his valuable work in SNO. (AffBMG R111, ¶21; *Exhibit Y* R114).

On 22 June 2011, Jones sent out an email Call for a meeting of the SNO Executive Board ("Board") to be held on Sunday 26 June 2011, having ascertained that Green would be out-of-state on that Sunday. (*Complaint* R3-4, ¶9-10; *Answer* R40, ¶10; *Answer* R77, ¶10; M4TI R64, ¶8; AffBMG R106, ¶5-6). The Board had twelve members at that time. (AffBMG R108, ¶11-12; *Bylaws* R9, ¶Executive Board) and unquestionably had at least ten members (*Complaint* R4, ¶10; *Answer* R40, ¶10; *Answer* R77, ¶10; M4TI R64, ¶8). Jones' Call was addressed to only eight Board members, and indicated that she intended to hold a vote on whether Green should remain president. (*Complaint* R3, ¶9; *Exhibit Three to Complaint* R14; *Complaint* R5, ¶14; *Answer* R40, ¶9; *Answer* R77, ¶9; *Exhibit Three to M4TI* R64, see ¶8 re: ¶14). Three Board members were not sent the Call for a Board meeting. (AffBMG R108, ¶12-13). The Board cannot transact any business unless every member has been notified. (M4TI R65-66, ¶11; AffBMG R108-109, ¶13; RONR p.469, lines 24-29). Jones' Call identified defendant/appellee Howell Sherrod ("Sherrod") as referee; Jones has no authority to name a

referee; Sherrod has proven himself to be anything but impartial. (Complaint R4, ¶11). Green filed a *Petition for Restraining Order* on Thursday 23 June 2011 (R15) and an *Amended Petition for Restraining Order* the next day (R26).

Only five Board members were present at the time and location announced in Jones' Call. (AffBMG R109, ¶15; *Exhibit Z* to AffBMG R113). Seven Board members were not present. (AffBMG R109, ¶14; see also AffBMG R108, ¶12). In excess of half the Board members must be physically present to constitute a quorum of the Board. (*Complaint* R4, ¶10; *Answer* R40, ¶10; *Answer* R77, ¶10; M4TI R65-66, ¶11; AffBMG R109, ¶15; RONR p. 469, lines 24-29). Neither the Board, nor any officer, nor SNO itself may allow voting by telephone, email, proxy, letter, etc. unless the same is explicitly authorized in the *Bylaws*, which it is not. (*Complaint* R4, ¶12; RONR p.408, line 31 et seq.). Jones, Polaha, and Jondahl have averred that Green "was removed as President ... on June 26, 2011 by action of the Executive Committee..." (*Motion to Dismiss* R45, ¶1-2, R48, R50, R52; M4TI R62-63, ¶3). The *Bylaws* create an executive board but do not allow the Board to make its own rules (RONR, pg. 469, lines 10-19) or to create an executive committee; no SNO executive committee may exist. (*Bylaws* R9-10, ¶Executive Board; RONR, pg. 468, lines 26-27). Polaha has distributed a statement bearing her signature and purporting to be "*Minutes of 26 June 2011 Special Meeting of the Executive Board*". (AffBMG R108, ¶10; *Exhibit Z* to AffBMG R113). The *SNO Bylaws* do not permit the Executive Board to hold special meetings, and the *Bylaws* require at least ten days notice of any special meeting of the membership. (*Bylaws* R10, ¶Executive Board). The 26 June 2011 gathering of several Board members was assembled for only fifteen minutes; no trial was conducted, and no charges against Green were adopted. (AffBMG R109-110, ¶16-18). The 26 June 2011 gathering was not a valid meeting of the Executive Board, and any action taken at that gathering to remove Green as president was improper. (M4TI R64, ¶6 & R66,

¶14; AffBMG R109, ¶15). Neither RONR nor the SNO *Bylaws* allow the Board to precipitately remove an officer who is neither incapacitated nor negligent. (*Complaint* R5, ¶14-16; M4TI R66, ¶14; M4SuppPI R 70, ¶14; AffBMG R107, ¶8).

Nothing in the *Bylaws* or RONR attenuates RONR's mandate that :

If, however, the bylaws provide that officers shall serve *only* a fixed term, such as "for two years" ... an officer can be deposed of office only by following the procedures for dealing with offenses by members outside a meeting; that is, an investigating committee must be appointed, it must prefer charges, and a formal trial must be held. (RONR, p. 643, ln. 5-14);

and the Bylaws do **not** state that 'the Executive Board has authority to depose an elected officer without due process and without regard for RONR.' (AffBMG R107, ¶8). The only valid business meeting of the Board within the past two years occurred in January 2010. (AffBMG R109, ¶15).

At the 18 July 2011 regular monthly meeting of SNO, Jones seized the Chair, claiming to be the new president based upon the 26 June 2011 gathering. (AffBMG R111, ¶20). Every action of the Board must be reviewed at the next meeting of the general membership. (AffBMG R110, ¶19 ; *Bylaws* R10, ¶Executive Board). This review amounts to a mandatory full *Reconsideration* of the matter. (AffBMG R110, ¶19). There was no vote or other action whatsoever to adopt or sustain the purported discharge action of the Board. (AffBMG R111, ¶20(e)). At the regular 18 July 2011 monthly SNO meeting, the vote to censure Jones for presenting the improper action of a few as a legitimate action of the Board exceeded one-third. (AffBMG R111, ¶20(d)).

Following entry of the *Final Decree*, Green received a letter signed by eight individuals including Jones, Polaha, and Jondahl; that letter, without citing any authority, purported to expel Green from SNO membership. (SuppAff BMG R120, ¶7). Southside Neighborhood Organization has taken no action against Green. (M4TI R64, ¶6; M4TI R66, ¶14; M4SuppPI

R70, ¶14; M4SuppPI R69, ¶6; SuppAffBMG R121, ¶8; AffBMG R109-110, ¶16-18; AffBMG R111, ¶20(e)). Green has alleged that the defendants have wrongfully acted in concert and with ill will or reckless disregard. (M4SuppPI R70, ¶9.). Green has been prejudiced by Polaha's ongoing refusal to provide him copies of or access to essential SNO documents (AffBMG R107, ¶9; SuppAffBMG R120, ¶6-8).

On 11 July 2011 Sherrod waived any right to countersue Green; on 26 July 2011 acting as attorney for Jones, Polaha, and Jondahl, Sherrod countersued for up to \$50,000.00 per person compensatory and punitive damages plus attorneys fees and costs. (*Order* R73, ¶2; *Answer* R80).

This civil action has been filed against discrete individuals, not SNO or its Executive Board. (*Chancery Docket*, R147).

It is essential to the well-being of the Organization and the neighborhood that the outcome of the November 2010 SNO election be respected and that the Executive Board function in a stable and predictable manner according to rules and proper procedure, rather than arbitrarily. The defendants' improper machinations have created a state of confusion and conflict which operates to the prejudice and detriment of the Organization and the neighborhood (M4TI R66, ¶12-13; M4SuppPI R70, ¶12-13), leading to serious, irreparable harm. (*Complaint* R6, ¶17-18; *Amended Petition for Restraining Order* R30-31, ¶17-18; SuppAffBMG R119-121, ¶5-8). It is unlikely that a Court can restore Green to office before the expiration of his current term (*Answer* R42, ¶17; *Answer* R79, ¶17) unless for reasons of judicial economy and in the interest of justice the Court of Appeals elects to grant Green's *Motion for Temporary Injunction*.

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